HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 1014 of 2006

Between:

Transmission Corporation of A.P., Ltd.,
Rep., by its Director,
Vidyuth Soudha, Hyderabad.

… Appellant

AND

Ch. Showry and another.

… Respondents

: JUDGMENT :

Counsel for the Appellant : Shri G. Vidyasagar

Counsel for respondent No.1 : Ms. S. Tripura Sundari

09th July, 2007

Per G.S. SINGHVI, CJ.

This is an appeal by Transmission Corporation of Andhra Pradesh Limited (hereinafter described as 'the appellant') for setting aside order dated 12.7.2005 passed by the learned Single Judge in Writ Petition No.7976 of 1999 whereby he quashed the suspension of respondent No.1 – Ch. Showry for the period from 5.6.1986 to 6.4.1992 and directed the appellant to treat the said period as "on duty" and pay consequential benefits to him.

Respondent No.1 joined the service of the Andhra Pradesh State Electricity Board (for short, 'the Board') as Record Assistant in April, 1965. In the course of service, he was promoted as Lower Division Clerk. While he was posted in the office of Assistant Accounts Officer-cum-Electricity Revenue Officer, Nuzvid, respondent No.1 was placed under suspension with effect from 5.6.1989 on the ground that he failed to produce the records for audit for the period from 21.3.1986 to 27.6.1986. Simultaneously, a complaint was lodged at Nuzvid Police Station that respondent No.1 was responsible for loss of the record. Thereupon, Crime No.109 of 1986 was registered under Section 406 IPC. Respondent No.1 was tried in the Court of V Metropolitan Magistrate, Vijayawada and was acquitted vide judgment dated 7.7.1993. In the meanwhile, a departmental enquiry was instituted against respondent No.1 under the Andhra Pradesh State Electricity Board (Discipline and Appeal) Regulations on the charge of loss of records. The enquiry officer submitted report dated 7.3.1991 with the finding that the allegation of misconduct levelled against the delinquent has been proved. The enquiry officer recommended for imposition of the penalty of removal from service on respondent No.1. The Chairman of the Board did not accept the suggestion of the enquiry officer and opined that the punishment of stoppage of two increments with cumulative effect besides treating the period of

suspension as "suspension" will be sufficient. Accordingly, show cause notice dated 27.5.1994 was issued to respondent No.1 proposing the punishment of stoppage of two increments with cumulative effect and for treating the period of suspension as "suspension" by way of punishment. He filed reply dated 4.7.1994. After considering the same, the disciplinary authority, vide its order dated 9.12.1994, confirmed the proposed punishment. The appeal preferred by respondent No.1 was dismissed by the Director (C) vide his order dated 22.2.1999. Paragraphs 3 to 8 of that order read as under:

> 3. Based on the enquiry report, a show cause notice was issued to Sri Ch. Sowry, LDC vide Memo No.DP'DM.IV/71/NA(1)/90-187, dt.27.5.94 along with copy of Enquiry Report to Shri Ch. Sowry, LDC, and he has submitted his explanation to the show cause notice vide letter dt.4.7.94. After examining his explanation, final orders were issued confirming the punishment of "stoppage of two increments with cumulative effect, besides treating the period of suspension as "suspension" vide reference 1st cited.
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> 4. In reference 2nd cited, the SE/O/Vijayawada has requested to issue revised orders treating the period of suspension as duty in respect of Sri Ch. Sowry, LDC as per the orders issued in the reference 3rd and 4th cited. As per the instructions issued in the references 3rd and 4th cited, the orders are applicable for the suspension period with effect from 7.4.92 (the date of applicability), hence ordered that the period of suspension i.e. from 7.4.92 to 12.4.94 is treated as duty for the purpose of pay and allowances to Sri Ch.Sowry, LDC vide Ed's Memo 5th cited.
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> 5. Sri Ch. Sowry, LDC has not filed any appeal against the final orders passed vide reference 1st cited. Suppressing this fact, Sri Ch. Sowry, LDC misleads the Hon'ble High Court that his appeal is pending since 1995. In fact, there is no such appeal filed either in 1995 or any other subsequent date. Sri Ch. Sowry, LDC has submitted Xerox copy of his alleged appeal dt.25.1.95 along with judgment in W.P.No.19791/98 which was received in this office only on 2.9.98. However, his appeal, though it is time barred was carefully examined in the light of the Hon'ble High Court orders.
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> 6. In his appeal stated to have been sent on 25.1.95, Sri Ch. Sowry, LDC has alleged that he was harassed by parallel action in a criminal case in Nuzivedu Police Station under Crime No.109/96 and C.C.No.211/90 and departmental enquiry for 8 years. He has

also stated that he was acquitted by Hon'ble Vth Metropolitan Magistrate, Vijayawada in his judgment dt.7.7.93 and the departmental action should have been closed after his acquittal in the Court of Law, Vijayawada. He further stated that he was drafted as enumerated for revision of electoral rolls from 15.3.85 to 29.3.86 by the Electoral Registration Officer, Nuzveedu. He has also stated that there was absolutely no case for awarding any punishment and treating the period from 8.3.96 to 24.3.96 as suspension against him. After careful examination of the points raised in the appeal, the Board has decided that the parallel action as stated by Sri Ch. Sowry is in order as per the service regulations and discipline and appeal regulations of the organization and the criminal case relates to theft of ledgers and the departmental enquiry is for not producing the ledgers for the audit. As both the charges are different, the departmental action need not be withdrawn simply because he was acquitted in the court of law.

7. His contention that he failed to produce the records as he was drafted as enumerator cannot be accepted since the records will be physically available always in the office irrespective of his produce these records even after his duty as enumerator was over. As he failed to produce the records, which were in his custody as a responsible departmental employee and further, as the said records are very important and valuable since they pertain to the revenue of the Board, it is a grave misconduct on the part of Sri Ch. Sowry, LDC and he is liable for departmental action. These points have already been considered during the departmental enquiry and he has not submitted any new points in his appeal. His contention that there was no case against him is untenable in view of the misconduct proved against him and in fact the Board has been magnanimous in taking a lenient view and letting him off with minor punishment awarded. Apart from the above, the appeal of Sri Ch. Sowry is time barred as he should have sent the same within three months of receipt of final orders. The appeal dt.25.1.95 said to have been sent by Sri Ch. Sowry was not sent either to the SE/o/Vijayawada or to the Board and he has for the first time sent his appeal along with a copy of the judgment dated 17.7.98 on 2.9.98 to the Board.

8. The Director (C), Transco of A.P. Limited after careful examination of the points raised in his appeal vide reference 6th cited and connected records, has observed that no fresh points are put forth by him in his appeal than those stated in his explanation to the show cause notice and also as his appeal is time barred, the Director confirmed the final orders issued in the reference 1st cited and the clarification issued in the reference 5th cited as considered to be fair and just. Hence, appeal does not

merit any consideration.

By a separate order dated 29.11.1997, Secretary of the Board directed that the period of suspension from 7.4.1992 to 12.4.1994 shall be treated as “on duty” for the purpose of pay and allowances.

Respondent No.1 challenged orders dated 9.12.1994, 29.11.1997 and 22.2.1999 in Writ Petition No.7976 of 1999. He pleaded that the finding of guilty recorded by the enquiry officer is based on no evidence and the disciplinary authority committed serious illegality by accepting the same and imposing two punishments. He further pleaded that in view of the judgment of acquittal passed by V Metropolitan Magistrate, Vijayawada, the disciplinary authority could not have punished him on the premise that he was responsible for the missing records. Another plea taken by respondent No.1 was that on the date on which the record is said to have been missing, he was on duty with the Election Commission as enumerator and, therefore, he could not be held guilty.

The learned Single Judge did not consider the contentions of respondent No.1 on merits and upheld the punishment of stoppage of two increments with cumulative effect by recording the following observations:

> “At the outset, I am of the opinion that there is no much evidence to hold that the petitioner is guilty of the charge leveled against him. However, there is some oral evidence and on the basis of which the petitioner was inflicted with the punishment. It is an admitted fact that the petitioner was not available on the fateful day when the ledgers were lost. Having failed to take note of the same, the department proceeded on the footing that the petitioner was drafted as enumerator cannot be accepted since the records will be physically available always in the office irrespective of his presence in the office or his engagement otherwise and nothing prevented him to produce these records even after his duty as enumerator was over.
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> Once it is the case of the management that those ledgers were the subject matter of a theft, question of petitioner submitting them before the authorities does not arise. May be the petitioner was liable for some negligence on his part and for that the respondents have sufficiently inflicted punishment of stoppage of two increments

with cumulative effect."

The learned Single Judge then declared that the punishment of suspension from 5.6.1986 to 6.4.1992 is disproportionate to the misconduct alleged against the petitioner (respondent No.1 herein) and directed that the said period be treated as "on duty" for the purpose of service benefits like increments, pension, gratuity etc. This is evinced from the following extracts of the order under challenge:

> "In view of the above, I am of the considered opinion that further punishment of treating the period from 05.06.1986 to 06.04.1992, as suspension is disproportionate to that of the misconduct alleged against the petitioner. Therefore, the impugned orders are set aside all through in so far as treating the period from 05.06.1986 to 06.04.1992 as "suspension". The respondents are directed to treat the period from 05.06.1986 to 06.04.1992 as on duty and pay him the consequential attendant benefits i.e. the increments, pensionary benefits, gratuity etc. within a period of three months from the date of receipt of a copy of this order. The rest of the punishment inflicted by the respondents is confirmed."

We have heard learned counsel for the parties. In our opinion, the order under challenge is liable to be set aside because the learned Single Judge did not consider any of the points raised by respondent No.1 for questioning the legality of orders dated 9.12.1994 and 29.11.1997. The observations made by the learned Single Judge in the paragraphs reproduced above are self-contradictory inasmuch as at one place, he has observed that there is not much evidence to hold the petitioner guilty of the charge and at another place he has observed that the petitioner would be guilty of some negligence and for that, the penalty of stoppage of two increments with cumulative effect is sufficient. It is not possible to reconcile these contradictions.

The declaration of invalidity granted by the learned Single Judge in respect of the suspension period i.e. 5.6.1986 to 6.4.1992 is totally devoid of reasons. The learned Single Judge has not referred to any rule or regulation which can support the conclusion that the punishment of suspension imposed on respondent No.1 is legally

impermissible.

In view of the above, we may have ourselves examined the legality of the orders impugned in the writ petition, but refrain from doing so because such a course will deprive either of the parties, the right to appeal. Moreover, we feel that ends of justice would be met by remitting the matter to the Single Bench for fresh adjudication of the writ petition.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside with the direction that the writ petition be listed before the Single Bench for fresh adjudication on merits.

As a sequel to disposal of the appeal, WAMP No.2145 of 2006 filed by the respondent for vacating interim order dated 12.10.2006 is disposed of as infructuous.

G.S. SINGHVI, CJ.

July 09, 2007

C.V. NAGARJUNA REDDY, J.

svs